

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 LANCE REBERGER,

Case No.: 3:17-cv-00077-MMD-WGC

4 Plaintiff,

Order

5 v.

Re: ECF No. 103

6 VERN, et al.,

7 Defendants.

8
9 Before the court is Defendants' motion for leave to file medical records under seal. (ECF
10 No. 103.)

11 In this motion, Defendants seek to file under seal exhibits containing Plaintiff's medical
12 request forms (kites) in connection with a motion for summary judgment. The exhibits are set forth
13 at ECF Nos. 104-1, 104-2.

14 "Historically, courts have recognized a general right to inspect and copy public records and
15 documents, including judicial records and documents." *Kamakana v. City and County of Honolulu*,
16 447 F.3d 1172, 1178 (9th Cir. 2006) (internal quotation marks and citation omitted). "Throughout
17 our history, the open courtroom has been a fundamental feature of the American judicial system.
18 Basic principles have emerged to guide judicial discretion respecting public access to judicial
19 proceedings. These principles apply as well to the determination of whether to permit access to
20 information contained in court documents because court records often provide important,
21 sometimes the only, bases or explanations for a court's decision." *Oliner v. Kontrabecki*, 745 F.3d
22 1024, 1025 (9th Cir. 2014) (quoting *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165,
23 1177 (6th Cir. 1983)).

1 Documents that have been traditionally kept secret, including grand jury transcripts and
2 warrant materials in a pre-indictment investigation, come within an exception to the general right
3 of public access. *See Kamakana*, 447 F.3d at 1178. Otherwise, "a strong presumption in favor of
4 access is the starting point." *Id.* (internal quotation marks and citation omitted). "The presumption
5 of access is 'based on the need for federal courts, although independent—indeed, particularly
6 because they are independent—to have a measure of accountability and for the public to have
7 confidence in the administration of justice.'" *Center for Auto Safety v. Chrysler Group, LLC*, 809
8 F.3d 1092, 1096 (9th Cir. 2016), *cert. denied*, 137 S.Ct. 38 (Oct. 3, 2016) (quoting *United States*
9 *v. Amodeo (Amodeo II)*, 71 F.3d 1044, 1048 (2nd Cir. 1995); *Valley Broad Co. v. U.S. Dist. Ct.*,
10 *D. Nev.*, 798 F.2d 1289, 1294 (9th Cir. 1986)).

11 There are two possible standards a party must address when it seeks to file a document
12 under seal: the compelling reasons standard or the good cause standard. *Center for Auto Safety*,
13 809 F.3d at 1096-97. Under the compelling reasons standard, "a court may seal records only when
14 it finds 'a compelling reason and articulate[s] the factual basis for its ruling, without relying on
15 hypothesis or conjecture.'" *Id.* (quoting *Kamakana*, 447 F.3d at 1179). The court must
16 "'conscientiously balance[] the competing interests of the public and the party who seeks to keep
17 certain judicial records secret.'" *Id.* "What constitutes a 'compelling reason' is 'best left to the sound
18 discretion of the trial court.'" *Id.* (quoting *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 599 (1978)).
19 "Examples include when a court record might be used to 'gratify private spite or promote public
20 scandal,' to circulate 'libelous' statements, or 'as sources of business information that might harm
21 a litigant's competitive standing.'" *Id.*

22 The good cause standard, on the other hand, is the exception to public access that has been
23 typically applied to "sealed materials attached to a discovery motion unrelated to the merits of the

1 case." *Id.* (citation omitted). "The 'good cause language comes from Rule 26(c)(1), which governs
2 the issuance of protective orders in the discovery process: The court may, for good cause, issue an
3 order to protect a party or person from annoyance, embarrassment, oppression, or undue burden
4 or expense.'" *Id.*

5 The Ninth Circuit has clarified that the key in determining which standard to apply is
6 whether the documents proposed for sealing accompany a motion that is "more than tangentially
7 related to the merits of a case." *Center for Auto Safety*, 809 F.3d at 1101. If that is the case, the
8 compelling reasons standard is applied. If not, the good cause standard is applied.

9 Here, Defendants seek to file exhibits under seal in connection with their motion for
10 summary judgment which is unquestionably "more than tangentially related to the merits of a
11 case." Therefore, the compelling reasons standard applies.

12 This court, and others within the Ninth Circuit, have recognized that the need to protect
13 medical privacy qualifies as a "compelling reason" for sealing records. *See, e.g., San Ramon*
14 *Regional Med. Ctr., Inc. v. Principal Life Ins. Co.*, 2011 WL89931, at *n.1 (N.D. Cal. Jan. 10,
15 2011); *Abbey v. Hawaii Employers Mut. Ins. Co.*, 2010 WL4715793, at * 1-2 (D. HI. Nov. 15,
16 2010); *G. v. Hawaii*, 2010 WL 267483, at *1-2 (D.HI. June 25, 2010); *Wilkins v. Ahern*, 2010
17 WL3755654 (N.D. Cal. Sept. 24, 2010); *Lombardi v. TriWest Healthcare Alliance Corp.*, 2009
18 WL 1212170, at * 1 (D.Ariz. May 4, 2009). This is because a person's medical records contain
19 sensitive and private information about their health. While a plaintiff puts certain aspects of his
20 medical condition at issue when he files an action alleging deliberate indifference to a serious
21 medical need under the Eighth Amendment, that does not mean that the entirety of his medical
22 records filed in connection with a motion (which frequently contain records that pertain to
23 unrelated medical information) need be unnecessarily broadcast to the public. In other words, the

1 plaintiff's interest in keeping his sensitive health information confidential outweighs the public's
2 need for direct access to the medical records.

3 Here, the referenced exhibits contain information regarding Plaintiff's health conditions. In
4 particular, these kites are unrelated to the issues in this lawsuit, and are submitted to show that
5 Plaintiff did not put Defendants on notice of his claim he was served undercooked and raw food.
6 Since the kites are not relevant to the litigated issues, and discuss separate medical concerns, the
7 court finds compelling reasons exist for sealing these exhibits. Therefore, Defendants' motion
8 (ECF No. 103) is **GRANTED**.

9 **IT IS SO ORDERED.**

10 Dated: November 12, 2019.

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12 William G. Cobb
13 United States Magistrate Judge
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